

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2404 OF 2004.

Ramchandra Pandurang Walke.
Versus.
Municipal Corporation of Greater
Mumbai and others.

... Petitioner

... Respondents.

Shri S.G.Joshi for the Petitioner.

Shri D.M.Mehta with Ms.Aruna Savla for Respondents
Nos.1 to 3.

Shri R.O.Pathak for Respondents Nos.4 and 5.

Shri P.S.Mandkaikar for Respondent No.6.

**CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.**

DATED : 25th JANUARY, 2006.

P.C.:

1. Heard Shri Joshi in support of this petition.

Shri Mehta and Ms.Savla appears for Respondents Nos.1 to

3. Shri Pathak appears for Respondent Nos.4 and 5 and

Shri Madkaikar appears for Respondent No.6.

2. The Petitioner is running a studio in the property belonging to Respondent No.6-Trust. It is his grievance that the Respondents Nos.4 and 5 have put up a structure in a part of his premises. A loft has been illegally put up and the plinth of that portion has been lowered. According to the Petitioner, Respondents Nos.4 and 5 have no right to be in those premises. The Petitioner has at one stage filed a suit in the Court of

Small Causes and that suit has been transferred and is now pending in the City Civil Court. Respondents Nos.4 and 5 have filed a cross suit which is pending in the Court of Small Causes. They have also filed an Interpleader Suit wherein the Petitioner and Respondent No.6 are Defendants. That suit is also pending in the Court of Small Causes. The Counsel appearing for the parties are agreeable that all these three suits should be heard at the earliest. The determination of those suits will decide the rights of the parties and the main controversy between them. We, therefore, request the learned Judge taking up that Suit No.1156 of 2003 in the City Civil Court to determine and decide the same at the earliest and preferably by the end of this year. Similarly we also request the concerned learned Judge taking R.A.Declaratory Suit No.8 of 2000 and the Interpleader Suit No.214 of 2001 in the Court of Small Causes to hear and decide the same expeditiously preferably by the end of this year. It will be open to the Petitioner to tender copy of this order to the concerned Judges and request them to hear those suits at the earliest.

3. As far as the present petition is concerned, it is with respect to the loft put up and the lowering of plinth in a part of the premises. As far as these acts are concerned, there is no injunction whatsoever protecting the putting up of the loft and lowering of

the plinth. Shri Mehta informs that a suit has been filed in the City Civil Court and injunction was sought earlier, but the same has been vacated. The concerned Judge has orally requested the Municipal Lawyer not to move with further action of demolition for some time. The Appeal from Order filed against that order has been dismissed. This being the position we have heard the learned Counsel appearing for Respondents Nos.4 and 5. We have, however, not been pointed out anything which will show that this loft is in any way authorised or the lowering of the floor was with the permission of the Municipal Corporation or of the landlord. In the circumstances, as far as prayer (a) of this petition is concerned, it is to remove this loft and also to see to it that the illegal lowering of the plinth and the shed is done away with. The Corporation is, therefore, at liberty and is directed to enforce Notice dated 28th April 2003 which it had issued under section 351 of the Bombay Municipal Corporation Act. Shri Mehta fairly points out that Respondents Nos.4 and 5 have applied for regularisation of the structure pursuant to the liberty given by the learned Single Judge. Considering the fact that adding of this loft and lowering of the plinth is prima-facie illegal, there is no question of regularising such illegalities. That apart, Shri Mehta states that an application was made to some wrong authority and therefore, it has remained all this time. The Corporation will be at liberty and expected to act

on the basis of the notice although this application has been pending. The Application may be filed by the authority concerned.

4. The petition disposed of in the above terms.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)